

AMENDED IN ASSEMBLY APRIL 25, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 581

Introduced by Assembly Member Klehs

February 16, 2005

An act to amend Section 7110.5 of the Business and Professions Code, and to amend Sections 1771.2 and 1776 of, and to add Section 1726.5 to, the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 581, as amended, Klehs. Public works: wages.

Existing law generally requires contractors engaged in public works to pay employees the prevailing wage, as determined by the Director of Industrial Relations, and to comply with specified provisions of the Labor Code. Under current law, the registrar initiates formal disciplinary proceedings against a contractor upon receipt of a certified copy of the Labor Commissioner's finding of a willful or deliberate violation of the Labor Code.

This bill would eliminate the requirement for the preparation of a certified copy of a finding and would instead provide for the initiation of formal disciplinary proceedings upon the Labor Commissioner's finding of a violation of the Labor Code.

Existing law requires each contractor and subcontractor on a public works project to keep accurate payroll records that may be accessed by the public through the awarding body or state agencies, as specified. Existing law provides that if the payroll records are provided to a joint labor-management committee established pursuant

to a specified provision of federal law, employee names and social security numbers are obliterated.

This bill would provide for obliteration for an individual's social security number only. This bill would also make technical changes to the provisions regarding public disclosure of payroll records.

Existing law authorizes a joint labor-management committee to bring an action against any employer who fails to comply with specified provisions of the Labor Code.

This bill would provide that a joint labor-management committee may bring an action within 4 years of a violation. *This bill would apply to a violation that occurred in the 4 years preceding the bill's effective date, and by doing so, would serve a public purpose, as specified.* This bill would provide that if the court finds a violation, the violation shall be enjoined, restitution shall be awarded for distribution of employee wages, and the committee shall be awarded attorney's fees, costs, and expenses.

Additionally, this bill would require the awarding body to report to the Contractors' State License Board the name, license number, location, and identification number of the public works project for all contractors and subcontractors performing public works for, or on the behalf of, the awarding body and would require the Contractors' State License Board to publish that information online.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7110.5 of the Business and Professions
- 2 Code is amended to read:
- 3 7110.5. (a) A licensee's failure to pay wages as required by
- 4 the Labor Code is a cause for disciplinary action. Upon receipt of
- 5 a copy of the Labor Commissioner's finding of a violation of the
- 6 Labor Code by a licensee, the registrar shall initiate formal
- 7 disciplinary action against that licensee within 30 days of
- 8 notification.
- 9 (b) A finding of a violation of the Labor Code by the Labor
- 10 Commissioner is not a prerequisite to disciplinary action under
- 11 this article.
- 12 SEC. 2. Section 1726.5 is added to the Labor Code, to read:

1726.5. The body awarding the contract for a public work shall report to the Contractors' State License Board the name and license number of each contractor and subcontractor performing the public work and the name, location, and identification number of the public works project for which the contract is awarded. The awarding body shall report to the Contractors' State License Board within 30 days of the time this information becomes available to the awarding body. The Contractors' State License Board shall include this information on the board's Web site relating to licensed contractors.

SEC. 3. Section 1771.2 of the Labor Code is amended to read:

1771.2. A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) may bring an action in any court of competent jurisdiction against an employer who fails to comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 not later than four years from the violation. If the court finds a violation of this chapter, it shall enjoin the violation, award restitution for distribution to employees for unpaid wages, and award the joint labor-management committee reasonable attorney's fees, costs, and expenses incurred in maintaining the action. ~~An action under this section may not be based on an employer's misclassification of the craft of a worker on its certified payroll records, if the misclassification is, or has been, adjusted pursuant to the National Labor Relations Act (Section 160k of Title 29 of the United States Code).~~ Nothing in this section limits any other available remedies for a violation of this chapter.

SEC. 4. Section 1776 of the Labor Code is amended to read:

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1 (1) The information contained in the payroll record is true and
2 correct.

3 (2) The employer has complied with the requirements of
4 Sections 1771, 1811, and 1815 for any work performed by his or
5 her employees on the public works project.

6 (b) (1) The payroll records enumerated under subdivision (a)
7 shall be certified and shall be available for inspection at all
8 reasonable hours at the principal office of the contractor on the
9 following basis:

10 (A) A certified copy of an employee's payroll record shall be
11 made available for inspection or furnished to the employee or his
12 or her authorized representative on request.

13 (B) A certified copy of all payroll records enumerated in
14 subdivision (a) shall be made available for inspection or
15 furnished upon request to a representative of the body awarding
16 the contract, the Division of Labor Standards Enforcement, and
17 the Division of Apprenticeship Standards of the Department of
18 Industrial Relations.

19 (C) A certified copy of all payroll records enumerated in
20 subdivision (a) shall be made available upon request by the
21 public for inspection or for copies thereof. A request by the
22 public shall be made through either the body awarding the
23 contract, the Division of Apprenticeship Standards, the Division
24 of Labor Standards Enforcement, or directly to the contractor or
25 subcontractor whose payroll records are requested. The
26 requesting party shall, prior to being provided the records,
27 reimburse the contractor's or subcontractor's costs of copying the
28 payroll records.

29 (2) This section shall not be construed to require that members
30 of the general public be given access to the records maintained at
31 the principal office of the contractor.

32 (c) The certified payroll records shall be on forms provided by
33 the Division of Labor Standards Enforcement or shall contain the
34 same information as the forms provided by the division.

35 (d) A contractor or subcontractor shall file a certified copy of
36 the records enumerated in subdivision (a) with the entity that
37 requested the records within 10 days after receipt of a written
38 request.

39 (e) Any copy of records made available for inspection as
40 copies and furnished upon request to the public or any public

agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

1 *SEC. 5. The provisions of this act shall apply to all violations*
2 *of Chapter 1 (commencing with Section 1720) of Part 7 of*
3 *Division 2 of the Labor Code that occurred in the four years*
4 *preceding this act's effective date. This act, by extending these*
5 *provisions to violations that occurred in the four years preceding*
6 *the effective date of this act, serve a public purpose of providing*
7 *equity to employees whose employers were not in compliance*
8 *with the Labor Code.*

9 *SEC. 6. The provisions of this act are severable. If any*
10 *provision of this act or its application is held invalid, that*
11 *invalidity shall not affect other provisions or applications that*
12 *can be given effect without the invalid provision or application.*